IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.923 OF 2021

Vikram Dhondiram Raskar
and others .... Petitioners

Versus

The State of Maharashtra
and others .... Respondents

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Mr. Vaibhav V. Ugle, Advocate a/w. Vikas B. Somawanshi and Roshan M Chavan, for the Petitioners.

Ms. Kavita N. Solunke, AGP, for Respondent Nos.1 to 3.

Mr. Umesh R. Mankapure, Advocate for Respondent No.4.

Mr. Abhijit Desai, Advocate for Respondent No.5.

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CORAM : R. D. DHANUKA AND
M. G. SEWLIKAR, JJ.

RESERVED ON : 1st JULY, 2022
PRONOUNCED ON : 22nd JULY, 2022

JUDGMENT : [*PER M.G. SEWLIKAR, J.*]

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing.

2. In this Writ Petition, the petitioners are seeking declaration under Articles 226 and 227 of the Constitution of India that the entire selection process pursuant to the advertisement dated 5th March, 2019 including short-listing of the candidates and their consequential appointments are illegal and bad in law and for

setting aside these appointments with further directions to Respondent Nos.1 & 2 to conduct and complete the enquiry under Section 79A of the Maharashtra Co-operative Societies Act, 1960.

3. The facts in a nutshell can be stated thus:

Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Commissioner for Co-operation & Registrar, Co-operative Societies, Maharashtra State. Respondent No.3 is the District Deputy Registrar, Co-operative Societies (DDR), Sangli, who has the power of superintendence over Respondent No.4 Bank. Respondent No.4 is a Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960.

4. The allegations made by the petitioners are that on 5th March, 2019, an advertisement for recruitment of 400 posts of Junior Clerk was published in "Daily Sakal". The conducting of the examination and selection of candidates was outsourced to respondent No.5 Maharashtra Institute of Hardware & Software Technology Private Limited, Amravati (MIHST Pvt. Ltd.). The petitioners also applied for the post of Junior Clerk. Accordingly examination was conducted by MIHST Pvt. Ltd. on 14th September,

2019 and 15th September, 2019. The said examination was conducted on line in two parts. First part of the examination was held on 14th September, 2019 and second part was held on 15th September, 2019. 5609 candidates had appeared for the said on-line examination. On 26th October, 2019, MIHST Pvt. Ltd. declared the result of the said on-line examination.

5. According to the petitioners, 1251 candidates were declared qualified for the interview. The interview was conducted between 30th October, 2019 and 11th November, 2019 in the office of respondent No.4 Bank. Final result was declared on 18th November, 2019. According to the petitioners, there were several illegalities in the conduct of examination and interview. Therefore, the petitioners raised their grievance before the District Collector, Sangli. It was their primary contention that the recruitment process was carried out in violation of the guidelines issued by respondent No.1. For enquiring into the allegations made by the petitioners, the DDR (respondent No.3) was appointed as an enquiry officer. The DDR submitted his report to the District Collector, Sangli on 31st December, 2019. According to the DDR the recruitment

process was conducted in accordance with the guidelines. The petitioners have, therefore, filed this Writ Petition seeking redressal of their grievances.

6. Respondent No.5 MIHST Pvt. Ltd. filed its reply on 23rd March, 2022. Respondent No.5 admitted that the job of conducting examination was outsourced to it by respondent No.4 Bank. It has contended that examination was conducted on 14th September, 2019 and 15th September, 2019 in accordance with the existing guidelines. It has, therefore, prayed for the dismissal of the Petition.

7. The petitioners filed a rejoinder on 29th March, 2022. It is contended that the candidate, namely, Dipali Jagannathrao Mane (Roll No.501577) was declared ineligible as she had secured 75 marks. However, she was called for the interview and was not only selected for the post of Junior Assistant but also was confirmed. This sole instance itself is indicative of the fact that the selection process smacks of malafide.

8. We have heard learned Counsel Shri Vaibhav Ugle for the petitioners, Smt. Kavita Solunke, AGP for respondent Nos.1 to 3,

Shri Umesh Mankapure for respondent No.4 and Shri Abhijit Desai for respondent No.5.

9. Learned Counsel Shri Ugle for the petitioners submitted that respondent No.4 Bank did not publish the answer-key on the Website despite making repeated requests. Interview of 1251 candidates was conducted between 30th October, 2019 and 11th November, 2019 and final result was declared on 18th November, 2019. On 7th January, 2020 respondent No.4 Bank displayed names and total marks of 1251 candidates. Out of them, 400 candidates were found eligible for the interview. Till then respondent No.4 Bank had neither published the answer-key nor the waiting list of the candidates nor the merit list of the eligible candidates for interview. He submitted that when their grievance was not redressed, the petitioners approached respondent No.2 the Collector pointing out these illegalities. Respondent No.3 was appointed as an Enquiry Officer who refused to interfere in the selection process. It was pointed out to the DDR that the final mark list was also not published on the Website in proper format. Queries put by the candidates on the Website went unanswered.

The entire selection process was conducted in violation of the guidelines issued by the State Government.

10. Shri Ugle submitted that respondent No.3 was appointed as an enquiry officer. The enquiry officer wrongly held that the selection process was conducted in accordance with the guidelines of the State Government. The selection process ought to have been outsourced to a Government empanelled recruitment agency, but, instead it was outsourced to a private agency i.e. respondent No.5 MIHST Pvt. Ltd..

11. Shri Ugle pointed out that a candidate by name Dipali Jagannathrao Mane was disqualified for having secured 75 marks i.e. less than the bench mark. She was declared disqualified. Even then she was selected and was confirmed too.

12. Learned counsel for respondent No.4 Bank Shri Mankapure and Shri Desai for respondent No.5 submitted that the Writ Petition is not maintainable. They submitted that respondent No.4 Bank is not the State within the meaning of Article 12 of the Constitution of India. They submitted that the entire selection process was conducted in accordance with the guidelines. The

petitioners were declared qualified. They appeared for the interview and when they failed in the interview, they started raising these objections.

13. They submitted that the petitioners appeared for the interview. Till then they did not have any objection regarding non-publication of answer-key, waiting list or merit list not being published till the date of interview. Since they were not selected, they started raising these objections. This conduct smacks of malafides, which makes them disentitled to the reliefs they have claimed.

14. Learned counsel Shri Ugle submitted in rejoinder that the Petition is maintainable as respondent No.4 is the State within the meaning of Article 12 of the Constitution of India. According to him, respondent No.1 State has control over respondent No.4 Bank. Respondent No.1 State exercises financial control and administrative control over respondent No.4 and, therefore, it is the State within the meaning of Article 12 of the Constitution of India.

15. We have given anxious consideration to these submissions.

16. The first and foremost issue that needs consideration is the maintainability of the Petition. Learned Counsel Shri.Ugle for the petitioners submitted that respondent No.4 is an instrumentality of the State Government as the State Government has financial and administrative control over the affairs of respondent No.4 Bank.

17. Admittedly, respondent No.4 is a private Bank. Apparently though the institution appears to be privately run, but on lifting the veil, it becomes clear that Government exercises financial control, management and/or administrative control over the said private institution. In the case of **Ajay Hasia vs. Khalid Mujib Sehravardi & Ors.**[1] the Supreme Court has laid down parameters for determining whether the institution is an instrumentality of the State. Said parameters are as under :

> "9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority's case (AIR 1979 SC 1628). These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed

1 AIR 1981 SC 487

on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows :

(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor……whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

(5) If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

> If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

18. In the case of **K.K. Saksena Vs. International Commission on Irrigation and Drainage & Ors.**[2], the Hon'ble Supreme Court observed thus :

> "15. The Court also took into consideration and referred to the following passage from the judgment in Pradeep Kumar Biswas & Ors. v. Indian Institute of Chemical Biology & Ors. (2002) 5 SCC 111.
>
> > "40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or

2 Passed in Civil Appeal No.11499/2014 (arising out of SLP (C) No.30348 of 2011) dt. 18.12.2014 (Hon'ble Supreme Court)

> otherwise, it would not serve to make the body a State."

16. The aforesaid judgment was relied upon by another Constitution Bench in M/s. Zee Telefilms Ltd. & Anr. v. Union of India & Ors. (2005) 4 SCC 649. In that case, the Court was concerned with the issue as to whether Board of Control for Cricket in India (BCCI) is a 'State' within the meaning of Article 12 of the Constitution. After detailed discussion on the functioning of the BCCI, the Constitution Bench concluded that it was not a 'State' under Article 12 and made the following observations in this behalf:

> "30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas case is not a factor indicating a pervasive State control of the Board."

17. Before arriving at the aforesaid conclusion, the Court had summarized the legal position, on the basis of earlier judgments, in para 22, which reads as under:

> "22. Above is the ratio decidendi laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in Pradeep Kumar Biswas case. Before doing so it would be worthwhile once again to

recapitulate what are the guidelines laid down in Pradeep Kumar Biswas case for a body to be a State under Article 12. They are:

"(1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State."

19. The Supreme Court in the case of **Kishor Madhukar Pinglikar Vs.Automotive Research Association Of India**[3] observed thus:

"6. It is to be observed that the determination of a body as a State is not a rigid set of principles. What is to be seen is whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government, albeit if the control is mere

3 Passed in Civil Appeal No. /2022 (arising out of Special Leave Petition (C) No.6637 of 2019) dt. 10.2.2022 (Hon'ble Supreme Court)

> regulatory, whether under statute or otherwise, it will not serve to make the body a State. Also, the presence of some element of public duty or function would not by itself suffice for bringing a body within the net of Article 12."

20. Shri Ugle learned Counsel for the petitioners could not point out any provision indicating that though respondent No.4 is a private institution, respondent No.4 is an instrumentality of the Government and the Government exercises control over it. None of the parameters enumerated by the Supreme Court in the above judgments get attracted so as to make respondent No.4 an instrumentality of the State. Therefore, Respondent No.4 cannot be considered as an instrumentality of the State, by virtue of which writ cannot be issued against respondent No.4.

21. Even if it is assumed for the sake of argument that respondent No.4 is the State within the meaning of Article 12 of the Constitution, still the petitioners cannot succeed.

22. It is not in dispute that the petitioners had participated in the interview. They preferred this Writ Petition and raised objections about violations of the guidelines only after they were

not selected for the post of Junior Clerk. It is well settled that a candidate who is called for the interview and takes part in the interview, cannot turn around and pick holes and contend that the selection process was conducted in violation of the guidelines. If the petitioners were aggrieved because of the violations of the guidelines, they ought to have raised their grievance before appearing for the interview. They did not do so. They appeared for the interview and only after they were not selected, they preferred this Writ Petition.

23. Learned counsel Shir Mankapure relied on the case of **Madan Lal and others Vs. State of J & K and others**[4]**.** In the case of Madan Lal (supra), the facts were almost identical. The candidates in that case were declared to be eligible for oral interview. After getting rejected in that interview, they challenged the selection process. The Supreme Court held thus :

> "9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral

4 (1995) 3 SCC 486

> interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla : 1986 Supp SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

24. Similar observations are found in the case of **Ramesh Chandra Shah and others Vs. Anil Joshi and others**[5]**.** The Supreme Court held thus :

5 (2013) 11 SCC 309

"17. Those who were desirous of competing for the post of Physiotherapist, which is a Group 'C' post in the State of Uttarakhand must have, after reading the advertisement, become aware of the fact that by virtue of the Office Memorandum dated 3.8.2010, the Board has been designated as the recruiting agency and the selection will be made in accordance with the provisions of the General Rules. They appeared in the written test knowing that they will have to pass the examination enumerated in Para 11 of the advertisement. If they had cleared the test, the private Respondents would not have raised any objection to the selection procedure or the methodology adopted by the Board. They made a grievance only after they found that their names do not figure in the list of successful candidates. In other words, they took a chance to be selected in the test conducted by the Board on the basis of the advertisement issued in November 2011. This conduct of the private respondents clearly disentitles them from seeking relief under Article 226 of the Constitution. To put it differently, by having appeared in the written test and taken a chance to be declared successful, the private respondents will be deemed to have waived their right to challenge the advertisement and the procedure of selection.

18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome."

25. These two decisions of the Supreme Court unequivocally reveal that a candidate who is declared eligible for the interview, and appears for the interview, cannot complain of the alleged violations in the selection process. Even if it is assumed for the sake of argument that the answer-key was not published before declaration of the final result, it is not such a grave violation which would render the entire selection process illegal. At the most, it can be said to be an irregularity and not an illegality. Therefore, we do not find any substance in this contention of the petitioners.

26. We are not inclined to exercise writ jurisdiction in this matter for one more reason. Parties are at dispute whether answer key was published before the interview or after the holding of the interview. They are also at dispute whether merit list/waiting list was published before the interview. These are questions of fact which cannot be gone into in the petition under Article 226 of the Constitution of India

27. Another limb of argument of learned counsel for the petitioners was that Dipali Jagannathrao Mane was declared unsuccessful in the written test, but, she was still called for the

interview, appointed and was confirmed too. It is pertinent to note that the petitioners had appeared for the post of "Junior Clerk" and said Dipali Jagannathrao Mane had appeared for the post of "Junior Assistant". The petitioners have no locus to challenge the selection process of the post for which they had not applied and, therefore, this argument deserves outright rejection.

28. For the reasons discussed hereinabove, writ cannot be issued against respondent No.4. The Petition is, therefore, devoid of any substance. We, therefore, dismiss the Writ Petition with costs of Rs.10,000/-. Costs shall be deposited with the Legal Services Authority of this Court. Rule stands discharged.

(M. G. SEWLIKAR, J.) **(R. D. DHANUKA, J.)**

PRADIPKUMAR PRAKASHRAO DESHMANE

Deshmane (PS)

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